UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division

GLORIA JUANITA OCTAVE :

ADMINISTRATRIX of

the ESTATE OF LUTALO OCTAVE,

:

Plaintiff,

- -----,

v. : Case No.: 3:16-cv-338 – JAG

SHERIFF MICHAEL L. WADE,

:

And

:

DEPUTY ELIZABETH LEE

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Defendants.

PLAINTIFF'S MOTION FOR CERTIFICATION PURSUANT TO RULE 5:40 OF THE RULES OF THE SUPREME COURT OF VIRGINIA

The Plaintiff, by counsel, pursuant to Rule 5:40, respectfully requests that this Court certify the questions of law presented in Defendant Elizabeth Lee's Motion to Dismiss to the Supreme Court of Virginia.

QUESTIONS PRESENTED FOR CERTIFICATION

- 1. In Virginia, has a Plaintiff alleged a plausible gross negligence claim if the allegations support an inference that the defendant exercised any degree of care at some point in time, but also that the defendant completely neglected the plaintiff's safety at other times?
- 2. In Virginia, does a complaint fail to state a claim of gross negligence fail as a matter of law if the complaint also states that a defendant exercised any degree of care?

Respectfully filed,

GLORIA JUANITA OCTAVE ADMINISTRATRIX of the ESTATE OF LUTALO OCTAVE

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2017, I have electronically filed the foregoing using the CM/ECF system, which will then send notification of such filing (NEF) to the following:

William W. Tunner, Esq. John P. O'Herron, Esq. *Thompson*McMullan, P.C. 100 Shockoe Slip Richmond, VA

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	/s/		
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